

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JACK SHERMAN,

Plaintiff,

v.

SUPERINTENDENT, MOHAWK CORRECTIONAL
FACILITY,

No. 9:08-CV-913
(FJS/DRH)

Defendant.

APPEARANCES:

JACK SHERMAN
Petitioner pro se
01-B-1061
Mohawk Correctional Facility
Post Office Box 8451
Rome, New York 13440

DAVID R. HOMER
U.S. MAGISTRATE JUDGE

REPORT-RECOMMENDATION AND ORDER

In an order filed September 4, 2008, this Court directed Jack Sherman ("Sherman") to file an amended petition to conform with Rule 2 of the Rules Governing Habeas Corpus Proceedings. Docket No. 3. Sherman was directed to file an amended petition on or before October 3, 2008 or the action may be dismissed. Sherman has failed to file his amended petition. Accordingly, since this action cannot proceed in the absence of Sherman's amended petition, it is hereby

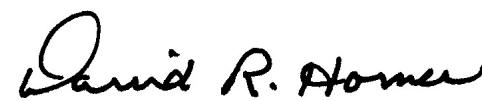
RECOMMENDED that the petition be **DISMISSED** in its entirety without prejudice pursuant to Fed. R. Civ. P. 16(f)(1)(C) and 37(b)(2)(A)(v) for Sherman's failure to comply with the September 4, 2008 order.

Pursuant to 28 U.S.C. § 636(b)(1), the parties have ten days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court.

FAILURE TO OBJECT TO THIS REPORT WITHIN TEN DAYS WILL PRECLUDE

APPELLATE REVIEW. Roldan v. Racette, 984 F.2d 85 (2d Cir. 1993) (citing Small v. Secretary of HHS, 892 F.2d 15 (2d Cir. 1989)); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

Dated: December 3, 2008
Albany, New York



United States Magistrate Judge